

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GAETANO D'ATTORE,

Plaintiff,

-v-

CITY OF NEW YORK, et al.,

Defendants.

JED S. RAKOFF, U.S.D.J.

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10 Civ. 1782 (JSR)

ORDER

On September 27, 2012 the Honorable Michael H. Dolinger, United States Magistrate Judge, issued a Report and Recommendation in the above-captioned matter recommending that the Court grant defendants' motion to dismiss the complaint with prejudice for plaintiff's failure to prosecute and violation of several court orders. Objections to the Report and Recommendation were due on October 15, 2012.

By two letters postmarked October 10, 2012, plaintiff submitted a "motion in opposition" to the Report and Recommendation. The Court has reviewed the objections contained in these letters and the underlying record de novo.

Having done so, the Court finds itself in complete agreement with Magistrate Judge Dolinger's Report and Recommendation and hereby adopts its reasoning by reference. Accordingly, the Court dismisses the action, with prejudice. In addition, because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. Moreover, the Court certifies that any appeal from this Order would not

be taken in good faith, as petitioner's claim lacks any arguable basis in law or fact, and therefore permission to proceed in forma pauperis is also denied. See 28 U.S.C. § 1915(a)(3); see also Seimon v. Emigrant Savs. Bank (In re Seimon), 421 F.3d 167, 169 (2d Cir. 2005).

Clerk to enter judgment.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
November 19, 2012